ATHCART IN PRIVATE PRACTISE NOT TRUE TO HIS OATH OF OFFICE

(From Thursday's Advertiser.)

The appearance of John W. Cathcart, County Attorney, as private counsel for one charged with a criminal offense in a civil action now before Judge Lindsay, is attracting attention among the lawyers of the city and is regarded by his friends as an imprudent action and by those not in sympathy with the way he carries out his sworn duties as a brazen defiance of legal ethics and a disregard of his oath of office. Of the many opinions expressed yesterday there were many more who thought Cathcart ought to be disbarred than there were who sought to condone his actions or to defend him.

Many years ago it was decided in the Supreme Court of Hawaii that the Attorney General could not accept a retainer in any divorce suit, the possibility of the duties of the prosecuting official as such and his duties as lawyer to client being in too great danger of clashing. In other cases the custom of Attorneys General and their deputies accepting fees from those involved in criminal cases has been condemned by the Supreme Court. These decisions and the fact that ethically a lawyer cannot be on both sides of any case, has little weight with the incumbent of the County Attorney's office, however, and yesterday this remarkable public prosecutor was found in open court as counsel and defender of one openly charged with a criminal offense.

There is enough doubt of the ethics of prosecuting officer accepting any divorce case in private practice to keep the ordinary official with a sense of decency out of them, but the circumstances under which Cathcart is now acting is so plainly in violation of his oath as County Attorney that in the opinion of some lawyers he has placed himself in danger of disbarment.

To a layman, at least, it looks as if Cathcart was pocketing the two hundred a month paid him for prosecuting crime and then reaching out for the fees which those charged with criminal offenses and misdemeanors are willing to pay him on their side in some way. Cathcart, for instance, was supposed a few weeks ago to be prosecuting a Chinaman named Ah Chee, charged with selling liquor illicitly, while at the same time he was taking Ah Chee's money to defend him in a trespass case in Judge De Bolt's court. The prosecution in the court against Ah Chee for the alleged offense of running the blind pig was lost, under circumstances which called for comment at the time and which the County Attorney made no attempt to explain.

What appears to be another flagrant departure from duty is on view now in Judge Lindsay's court, where the man drawing public money to prosecute crime is appearing as private attorney for one person charged with a crime and accepting a private fee to press a charge of crime against another.

This is the divorce case brought by Minnie Will against her husband, Charles H. Will. Mrs. Will, in her sworn complaint, charges her husband with "illicitly cohabiting with one Aukai;" the husband, in his sworn answer, denies the charge made by his wife and in a cross-bill charges her with "illicitly cohabiting with men and more especially with one John Cabral." John W. Cathcart appears for the defendant, his name being endorsed on the answer in his handwriting, thus appearing as an attorney in defense of a person in a civil suit, where the very basis of the suit involves the commission of a crime. Here the basis of the suit—there being a charge and a counter charge—is an offense which, according to Section 3147 of the Revised Laws of Hawaii, is a crime which Cathcart, as County Attorney, is in duty bound to investigate and prosecute—if accepting a fee from the alleged criminal does not shut the official eye and keep the private one on the lookout for further fees.

Attorney General Should Investigate.

This appears to be a case which the Attorney General certainly ought to investigate. Cathcart is a deputy attorney general. Can the department afford to have a deputy who will openly violate that provision of the Revised Laws (Section 1551) which provides that the Attorney General "shall not receive any fee or reward from or in behalf of person or prosecutor, for services rendered in any prosecution or business to which it shall be his duty to attend; **nor be concerned as counsel or attorney for either party in any civil action depending upon the same state of facts.**" This statute, of course, applies to the deputies of the Attorney General, of whom Cathcart is one, the County Act in its provisions making this clear.

Moreover the general divorce law provides that if the judge have reason to believe that there may be collusion in any divorce case brought before him, or that important testimony can be procured which has not been produced, it shall be his duty to continue the case, and the Attorney General shall be heard to establish the fact of collusion or of the existence of evidence not produced. Now, a judge cannot "suspect collusion, or that important testimony can be procured which has not been produced" until the case is actually brought before him. Then fancy a judge having to turn to Cathcart to secure evidence of collusion or to produce important testimony when he, although drawing the taxpayers' money for the very purpose, has taken private fees to make out the best case he can for his client in the particular case, a case in which his client is charged with a criminal offense.

What position will Judge Lindsay be in if in the progress of the case he should suspect collusion? Could he expect Cathcart to help him trace it? Could he expect this County Attorney to produce further "important testimony" if that testimony were to be used against his private client? What kind of a position is this when a public official ties his hands from a possibility of doing what may be his public duty and placing Judge Lindsay in a position where he also may be prevented from enforcing the law of the land?

Judge De Bolt's Strong Statement.

It was in regard to this possibility of situation that Judge De Bolt said yesterday: "I consider it highly improper for any prosecuting officer to appear as private counsel in any divorce case. I have expressed this opinion to a number of lawyers, and I think to one or two of the judges. Mr. Cathcart has appeared before me in several divorce cases and I asked him the question once if he did not think there was an impropriety in his so appearing as private counsel while he occupied the position of a public prosecutor. He did not answer the question, merely replying that 'they all do it,' or that 'they have always done it.'

"Firmly convinced of the extreme impropriety of it, of the embarrassment it may lead both lawyers and judges into, I have given considerable thought to some means of remedying it. The law as it stands does not seem to give a judge any power to prevent it, except by calling attention to the gross impropriety of it. At one time I thought of trying to remedy it by a rule of court. But that can hardly reach it. If the public prosecutor has a right to appear in such cases, he can not be prevented by a rule of court.

"The statute requires me to make an annual report to the Chief Justice, and I have in the past included in amendments and improvements in the law as the experience in the actual trial of causes suggested to me. I am now preparing my report for this year, and I express myself on this subject. Without anticipating my report to the Chief Justice I may say that it seems to me that Section 2234 of the Revised Laws, which provides that when the judge in the trial of a divorce case suspects collusion, or that important testimony can be produced which has not been produced, he may call in the Attorney General or any prosecuting officer to take the matter up, might be well amended by adding a provision of law from the State of Washington. That provision is that in every divorce case where the defendant does not appear, or where he admits the allegations of the complaint, the public prosecutor shall appear and resist the divorce and shall have the right to summon witnesses. But where the attorney for the plaintiff is the partner of the prosecuting officer, or even occupies the same office with him, then the court shall appoint some other lawyer to resist the divorce.

"I find on looking it up that this Washington statute is quite an old one, indicating that it seems to have worked well there. But it will be observed that the Legislature of Washington considered it improper to allow the prosecuting attorney to appear in the case in this official way even, where a partner in his private practise, or one who even occupied the same offices with him, though they were not partners, was on the other side.

"The State is interested in divorce cases as it is not in other controversies between individuals. It is interested in maintaining the integrity of the marriage relation and of the home. It can be understood, then, why there should be impropriety in its attorney, the public prosecutor, appearing in divorce cases, except as its representative. If he appears representing any other interest than that of the public, there must be a clash between his interests and his duty.

"I have always considered it an impropriety for a prosecuting officer in one jurisdiction to appear in defense of those accused of crime in another. I do not think the Attorney General or the County Attorney or the deputy of either should appear in the United States Court defending those accused of crime, nor prosecuting officers in the United States courts appearing in the Territorial courts to defend those accused of crime.

"But on the original subject, I consider it highly improper for any prosecuting officer to appear as private counsel in any divorce case."

Court's Attention Called.

The situation presented by Cathcart's appearance in the Will case was brought to the attention of the justices of the Supreme Court yesterday forenoon in the course of argument, and so pointedly that they felt called on to inferentially admit the seriousness of the situation in which the County Attorney had placed himself, by saying that they could not take judicial knowledge of anything not in the record of the case before them. As the record did not show that the County Attorney's office was taking divorce cases they could not pass upon the question of its propriety or legality in the proceeding then before them.

The matter was spoken of by Judge A. S. Humphreys in his argument before the Supreme Court in the Blanch Martin case. In this case the question is whether the Territorial statute against adultery is in force, or whether the Edmunds Act is exclusive in its operation or whether both are in force. Judge Humphreys, representing the appellant, maintained that the Edmunds Act is exclusive in its operation and that the Territorial statute is not in force. Deputy County Attorney Milverton, representing County Attorney Cathcart, appeared to maintain that both statutes are concurrently in effect and that a defendant can be prosecuted under either. Deputy Attorney General Whitney appeared to maintain the proposition that the Edmunds Act is not in force here but that the Territorial statute is exclusive in its operation. Attacking the position taken by Milverton, Judge Humphreys said:

"There is a striking inconsistency in the position taken by the County Attorney's office concerning these matters. Here we have one of the staff of that office contending that the Territorial laws against certain social crimes are in force, while his chief is now before Judge Lindsay defending a person in a divorce suit charged with adultery. **Either these gentlemen are not sincere in contending that the Territorial statutes are in force, or, if they are sincere, then it must inevitably follow that they are guilty of a gross abandonment of duty in appearing in civil suits bottomed upon the commission of a crime.**

"And all the more flagrant is this departure from duty when take in the beard and teeth of a statute which says they shall not do so."

Supreme Court Decision.

So insistent are the ethical leaders of the bar, those members of it who reach the Supreme Court bench, lest shady methods should creep into the prosecuting departments, that a decision is on file in this Territory criticizing an Attorney General for appearing as private attorney for parties involved in a civil suit in a case based on the facts in a criminal suit, even though the criminal suit itself was terminated. In the case of Phillip versus Waller, reported in 5 Hawaiian Reports, page 617, decided by Chief Justice Judd, the Attorney General appeared as counsel for Phillip, who was suing Waller to recover damages for a malicious prosecution. In criticizing the Attorney General for appearing in the case, the Chief Justice said:

"The Attorney General was counsel for the plaintiff. He is by law the public prosecutor: and if he should appear as counsel to sue for damages in behalf of parties for matters arising out of the criminal prosecution, it would tend to discourage, if not to prevent prosecutions for offenses. * * * It was not improper for the court to express its disapprobation of this course, and its effect upon the prosecutions for crime."

It will readily be seen that the present Cathcart case is a much more flagrant case than the one referred to by Justice Judd, for in that case the criminal prosecution had actually terminated before the Attorney General appeared as counsel in the civil suit, while in the Will case, in which Cathcart, the salaried County Attorney, now appears as the paid advocate of one charged with a criminal offense, the prosecution is not even begun—if it ever is. Cathcart has not prosecuted for this crime, and, having pocketed a fee to establish the innocence of the party accused, does it appear likely that he will ever prosecute?

Can it be comprehended how, under any conception of ethics, he would be allowed to do so?

W. R. Castle's Opinion.

"My opinion of a public prosecutor accepting a retaining fee in any case in which there is a possibility of his duties to the public and those he owes to his client clashing is that it is decidedly wrong," stated W. R. Castle yesterday. "In divorce cases I believe that the Attorney General or his deputies should not appear as attorneys. That has been my opinion for many years.

"When I became Attorney General of Hawaii, thirty-two years ago, I refused to appear in divorce proceedings as private counsel. W. O. Smith, who was my deputy, did not agree with me in this, so I resolved to get the opinion of the Supreme Court in the matter. The opinion rendered by Justices Judd and Allen, Justice Harris being away, was that the Attorney General could not so appear consistently with his public duty.

"You may quote me as being decidedly opposed to such a proceeding on the part of any public prosecutor."

Charges and Counter Charges.

The divorce case in which County Attorney Cathcart appears as the attorney for the libelee, is that of Minnie Will vs. Charles H. Will. The libel was filed July 1, 1908, and the answer July 20. Samuel F. Chillingworth appears for the libelant and John W. Cathcart for the libelee.

The libel alleges that the couple were married July 16, 1902, at St. Andrew's cathedral by the Rev. Kitcat; that for more than two years past the libelee has become addicted to the excessive use of intoxicating liquors, and has been in an almost continuous state of drunkenness, neglecting his home and family and leaving them without the necessaries of life or proper support, compelling libelant and her children to depend on relatives and friends for their food and lodging; and that at present he entirely neglects his family and is illicitly cohabiting with one Aukai. The libelant also alleges that in February, 1907, the libelee deserted her and his family and went to San Francisco, and left her sick in bed without money or means, and leaving her and their three children—Ruth Mary, aged 6; Charles M., aged 4, and Rose, aged 2—dependent on her father.

In his answer and cross bill, Will denies the allegations against himself and alleges that about the middle of May, 1907, said libelant left their home upon the pretense of going to visit as a companion a Mrs. Young, whom she said lived near the corner of Pensacola street and Beretania avenue, taking with her the children, but that said libelant did not go to visit the person she pretended to visit, and, on the contrary, went to a house occupied by her mother, on Punchbowl, near Queen street, in said Honolulu, in the rear of a Japanese saloon, and there kept herself concealed from libelee, and libelee was unable for the period of two weeks to ascertain what had become of said libelant and of his said children. That said house above described was then and had been for some time a house of bad repute and resorted to by both men and women of ill repute and disorderly conduct. That, contrary to the wishes of this libelee, said libelant continued to reside in said house for some six weeks and then removed to rooms in a building in the rear of a saloon on Richards street, near Queen street, and after a short time removed to a house on Queen street opposite the brewery, in said Honolulu, where she remained for some two months or so. That during all of said time she conducted herself in a dissolute manner, drinking intoxicating liquor to excess, and illicitly cohabiting with men, and more especially with one John Cabral.

Libelee alleges that during the months of August, September, October and November of 1907 said libelant lived and cohabited with a man by the name of John Cabral, as his wife, in a house on the Asylum road near to the Insane Asylum, in said Honolulu, and that she has ever since kept up and maintained illicit relations with said John Cabral.

Soon after the case was brought, Judge Lindsay entered an order requiring Will to pay costs and a $25 attorney fee. When the case came before Judge Lindsay for hearing, Samuel F. Chillingworth, attorney for Mrs. Will, stated that he would not press the adultery charge against the defendant, but Mr. Chillingworth says he did that not because the charge is not true, as he believes, but because there are other sufficient grounds for the divorce in his opinion.

The case was on hearing before Judge Lindsay yesterday.

L. H. Punilo, the jailor at the Molokai Settlement, is obliged, for lack of other accommodations, to sleep in one of the cells of the jail. High Sheriff Henry will try and get the Legislature to appropriate for a suitable residence for the jailor.

List of Chamber of Commerce Visitors

SAN FRANCISCO, September 22.—All arrangements have been completed for the transpacific excursion of representative business men of the Pacific Coast under the auspices of the San Francisco Chamber of Commerce, which leaves on the steamer Tenyo Maru next Friday, and which, it is expected, will arrive in Yokohama four days before the arrival of the American battleship fleet.

Assurances have been received from the government officials and commercial bodies of Japan that the arrival of the excursionists is being looked forward to with keen interest, and that, while being entertained as distinguished guests, they will be given every opportunity of observing life and obtaining an insight into the commercial life of the country.

According to the present program, after their tour of observation and participating in the festivities attendant upon the reception to the American fleet, the party will leave Yokohama on the return trip November 4th. The personnel of the party will be as follows:

From San Francisco—Honorary commercial commission, representing the Chamber of Commerce of San Francisco: W. M. Alexander, F. W. Dohrmann Sr., Robert Dollar, R. B. Hale, J. R. Hanify, E. L. Hueter, Henry Michaels, Max Schmidt, James B. Stetson, George F. Volkmann, Mrs. C. S. Dohrmann, Mrs. Robert Dollar, Mrs. R. B. Hale, Mrs. J. R. Hanify, Mrs. E. L. Hueter, Mrs. K. Pischel, Mrs. Louisa Volkmann and Miss Johanna Volkmann.

From Los Angeles—Members of Chamber of Commerce of Los Angeles: J. J. Bergin, A. C. Billicke, J. T. Fitzgerald, Alfred P. Griffiths, S. I. Merrill, Mrs. J. J. Bergin, Mrs. A. C. Billicke and Mrs. J. T. Fitzgerald.

From Oakland—A. Kendall, member of Chamber of Commerce, and Mrs. Kendall.

From Eureka—E. E. Skinner, president of Eureka Chamber of Commerce, and Mrs. A. Brizard.

From San Diego—William Clayton, Chamber of Commerce member.

From Portland, Or.—Members of Chamber of Commerce: O. M. Clarke and Charles P. Friendly, Dr. Henry Coe and Mrs. O. M. Clarke.

From Seattle, Wash.—Members of Chamber of Commerce: E. F. Blaine, J. D. Lowman and W. H. Treat, and their wives.

ROOSEVELT ON THE FORAKER INCIDENT

In a formal statement on the Foraker issue, raised by Hearst, President Roosevelt bases another appeal for the support of Taft, whose defeat would bring, he says, "lasting satisfaction to but one set of men, namely to those men who are shown in the correspondence published by Mr. Hearst, were behind Mr. Foraker, the opponent of Mr. Taft within his own party and who are now behind Governor Haskell and his associates, the opponents of Mr. Taft in the opposition party."

Roosevelt's statement is a reminder of the fact that Taft objected to an endorsement in Ohio in the same resolution that endorsed Foraker for reelection to the Senate and refers to the Brownsville agitation raised by Foraker in the Senate as a phase of the effort "by the representatives of certain law-defying corporations to bring discredit upon the Administration," not "a genuine agitation on behalf of colored men at all."

"The publication of this correspondence," wrote the President, "not merely justifies in striking fashion the action of the Administration, but also casts a serious sidelight on the attacks made upon the Administration both in the Denver Convention, which nominated Mr. Bryan, and in the course of Mr. Bryan's campaign. There is but one way to preserve and perpetuate the great reforms, the great advances in righteousness and upright and fair dealing, which have marked the management of the affairs of the National Government during the last seven years, and that is by electing Mr. Taft."

HERE AT HOME

Honolulu Citizens Gladly Testify and Confidently Recommend Doan's Kidney Pills.

It is testimony like the following that has placed Doan's Backache Kidney Pills so far above competitors. When people right here at home raise their voice in praise there is no room left for doubt.

Mrs. N. Joseph living at the corner of Liliha and King streets, Honolulu, states as follows: "I was troubled for seven months with a lame back, and also suffered from occasional attacks of chills. These various complaints made my condition by no means a happy one, so that I much desired some remedy which would bring relief. This I found in Doan's Backache Kidney Pills, some of which I obtained at the Hollister Drug Co.'s store. I am pleased to say that they gave me not merely temporary but permanent relief and I have not the least hesitancy therefore in recommending Doan's Backache Kidney Pills. They are a good kidney medicine."

Doan's Backache Kidney Pills are for sale by all dealers at 50 cents per box, (six boxes $2.50). Mailed by the Hollister Drug Co., Ltd., Honolulu, wholesale agents for the Hawaiian Islands.

Claim Allowed.

Judge Lindsay yesterday allowed the petition of Mary H. S. Davis asking for reimbursement for advances made for the support of her son, Henry A. P. Carter, out of his estate. Judge Lindsay cut down one item half, as it was shown that it was a mathematical error.

CAPT. PARKER SUSPENDED

From Thursday's Advertiser.)

There was considerable stir at the police station when it became known that Officer Robert Parker had been suspended for violating the rules of the department, and the suspension of special officer Ahi of the detective bureau, on charges bearing upon his alleged action with Chinese gamblers. The latter case goes before the Grand Jury today. It is said that some Chinese gamblers have made affidavits that officer Ahi was willing to accept payment from them to permit certain games to be played and to which he would shut his eyes. They also swear that certain evidence money which was produced in court in one of the recent cases, was money which he had surreptitiously introduced when gamblers' money could not be found, as evidence, in the room where the game was raided.

This is the culmination of troubles in the detective bureau which started sometime ago when a new Chinese informer was given a badge. It is said that much of the dissension in the department is due to jealousy among the men. This informer was one who conducted gambling games during the Taylor regime in the police department and was arrested several times for gambling and running gambling places. While sending tips to the detectives about certain games, he was patronizing another game of which he said nothing, and was caught there.

Officer Ahi states that the evidence of the affidavit makers is false and alleges a conspiracy against him. This is the favorite method of Chinese gamblers to proceed against an officer when they desire to have his services with the police department severed.

Sheriff Iaukea yesterday appointed D. P. Kauihini and D. W. Kawainea as turnkeys in place of Sam Kaloa and Albert Kauwe, who have resigned to enter the political arena as spellbinders. The vacancy in the receiving clerk's department caused by the resignation of Dan Kamahu, a candidate for the House, will be filled by Stephen Parker, a bicycle officer. In place of Charles Rose, chief clerk, who is to resign to run for Deputy Sheriff, only a temporary appointment will be made as Rose will not resign until the middle of next week, as he has to prepare the bills and vouchers for the past month to be presented to the Supervisors.

Truant Officer Prendergast, an officer of the Democratic committee, has also resigned. His place will not be filled until Sheriff Iaukea has a conference with Superintendent of Public Instruction Babbitt.

Statistics of arrests for the month of September in Honolulu only, are as follows:

	Arrests.	Convictions.	Pending.
Gambling	102	35	14
Drunkenness	56	52	
Assault and battery	36	20	6
Larceny	10	3	
Liquor	5	3	
Vagrancy	20	8	
Insanity	2	2	
Malicious injury	3	1	
Disturbance	5	5	
Miscellaneous	71	41	4
	310	170	24

In the gambling statistics only twenty-five Chinese were convicted and four were Hawaiians.

SENATE MAY INVESTIGATE

WASHINGTON, September 19.—The bomb which William R. Hearst has exploded over the head of United States Senator J. B. Foraker of Ohio, seeking to prove that the Senator was paid $50,000 by the Standard Oil Company for smothering an anti-trust bill, introduced December 4, 1901, by the late Senator J. K. Jones of Arkansas, formerly chairman of the Democratic National Committee, has set political Washington aflame. Tonight public public men here are wondering if the political catastrophe will assume such proportions as will demand attention by the Senate Committee on Privileges and Elections.

Even if no charges were presented to the committee, Chairman J. C. Burrows has it within his power to take cognizance of public charges and call his committee together to consider what action should be taken. It is no secret that Senators have become very sensitive the past year or so over charges that the body is under corporation control. It was the irony of fate that the author of the bill was later confronted with charges that he was connected with the cordage trust and finally defeated for reelection.

Counterfeit Money.

Commissioner Judd yesterday held Horikawa to await the action of the grand jury. Horikawa is a Japanese charged with attempting to pass a counterfeit ten-dollar gold piece on a conductor on an Oahu Railway train. It is believed that the counterfeit was one of those made by some Koreans on Kauai who are now serving sentences for it.